

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

HCP No. 171/2024

Reserved on: 06.03.2025

Pronounced on: 25.03.2025.

**Muneeb Ahmad Thoker
S/o Mohd. Amin Thoker
R/o Sopat Tangpora
District Kulgam, Kashmir**

...Appellant/Petitioner(s)

Through: Mr. Shuja ul Haq, Advocate.

Vs.

- 1. Union Territory of J&K through Principal Secretary to Govt. Home Deptt. J&K, Civil Secretariat, Srinagar/Jammu.**
- 2. District Magistrate, Kulgam Kashmir.**
- 3. Superintendent Central Jail, Srinagar Kashmir.**

...Respondent(s)

Through: Mr. Furqan Yaqub Sofi, GA.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT

- 1.** Heard learned counsel for both the sides.
- 2.** Perused the pleadings and the record therewith. Studied the detention record produced by Mr. Furqan Yaqub Sofi, learned Government Advocate for the respondents.
- 3.** The petitioner-Muneeb Ahmad Thoker, acting through his father namely Mohd. Amin Thoker, has petitioned this court through the medium of the present writ petition filed

on 17.05.2024 whereby release of the petitioner from preventive detention custody is being solicited as the petitioner is undergoing preventive detention being lodged in the Central Jail, Srinagar.

4. The Superintendent of Police (SP), Kulgam, by virtue of communication No. Legal/PSA/2024/5097-5100 dated 30.03.2024, came to place a dossier before the District Magistrate, Kulgam with respect to the petitioner making out a case of his preventive detention in order to prevent the petitioner from acting in any manner prejudicial to the security of Union Territory of Jammu & Kashmir.

5. Preventive detention order of the petitioner was solicited under clause 1(a) of section 8 of Jammu & Kashmir Public Safety Act, 1978.

6. In the dossier, the petitioner was referred to be an over ground worker (OGW) being motivated by a killed terrorist Shakoor Ahmad Dar of Hizbul Mujahideen (HM) outfit. The petitioner's antecedents in terms of his involvement in a criminal case registered under an FIR No.44/2019 by the Police Station Devsar and an FIR No. 69/2019 also registered by the Police Station, Devsar, were referred to serve and support a case for seeking preventive detention

of the petitioner otherwise his personal liberty was to be prejudicial to the security of Union Territory of Jammu & Kashmir.

7. In addition to the aforesaid two FIRs, the petitioner's booking for proceeding under sections 107/151 CrPC on 11.03.2024 was also referred to as being the precipitating incident against the petitioner good enough to book him for preventive detention.

8. The dossier was accompanied with a copy of application No. 16/6-10/PSD/24 dated 11.03.2024 of the Police Station Devsar, Kulgam, in terms whereof proceedings under section 107/151 CrPC were solicited to be commenced, copy of FIR No. 44/2019 dated 21.05.2019 registered for alleged commission of offences under sections 13/16/18/20/38/39 of Unlawful Activities (Prevention) Act, 1967 along-with statement of prosecution witnesses under section 161 CrPC and the documents forming part of the police report except the police report (challan), copy of FIR No. 69/2019 dated 15.09.2019 for alleged commission of offences under sections 13/16/18/19/38/39 of Unlawful Activities (Prevention) Act, 1967 accompanied with the statement of

prosecution witnesses under section 161 CrPC and other accompanied documents but without copy of challan.

9. Thus, a fractured dossier came to be submitted by the Superintendent of Police, District Kulgam before the District Magistrate, Kulgam for seeking preventive detention of the petitioner.

10. Acting upon said dossier, the District Magistrate, Kulgam at his end came to draw grounds of detention for the purpose of fetching a purported subjective satisfaction that a case was made out for subjecting the petitioner to suffer preventive detention on account of his alleged activities being found prejudicial to the security of the Union Territory of Jammu & Kashmir.

11. Based upon the grounds of detention so drawn, the District Magistrate, Kulgam came to pass an order No. 14/DMK/PSA/2024 dated 16.04.2024 thereby ordering preventive detention of the petitioner in order to prevent him acting in any manner prejudicial to the security of the State and directed his detention and detainment in the Central Jail, Srinagar.

12. Said detention order No. 14/DMK/PSA/2024 dated 16.04.2024 came to be passed in exercise of power under clause 1(a) of section 8 of J&K Public Safety Act, 1978.

13. The preventive detention order came to be executed upon the petitioner on 18.04.2024 by S.I. Shuban Lal of Police Station, Kulgam, who at the time of taking the petitioner under custody in execution of the detention warrant came to hand over to the petitioner the order of detention (one leaf), notice No. DMK/JC/2024-25/64-69 dated 16.04.2024 of District Magistrate, Kulgam addressed to the petitioner informing him about passing of detention order against him (one leave), grounds of detention-(three leaves), copy of FIR No. 44/2019 (one leaf), and copy of FIR No. 69/2019 (one leaf), total (seven leaves), meaning thereby that the entire compilation of the dossier in the form of documents therewith was not supplied to the petitioner and only the copies of two FIRs, unaccompanied with the rest of the material otherwise accompanying the dossier, came to be handed over to the petitioner for the reasons best known to the detention warrant executing officer or Superintendent of Police, District Kulgam, who was entrusted with an authority to

execute the detention warrant issued the District Magistrate, Kulgam.

14. The petitioner is said to have been explained the contents of the documents so delivered to him by S. I. Shuban Lal and also making him apprised that the petitioner can make a representation to the Government against his detention order. As against the report of executing officer having delivered seven leaves compilation of detention order, as referred above, the receipt taken from the petitioner to the said effect was of six leaves.

15. The detention order No. 14/DMK/PSA/2024 dated 16.04.2024 of the District Magistrate, Kulgam came to be approved by the Home Department, Govt. of Jammu & Kashmir vide Government Order No. Home/PB-V/792 of 2024 dated 23.04.2024 in terms of requirement of section 8(4) of J&K Public Safety Act, 1978.

16. At his end, the petitioner came to address a written representation dated 29.04.2024 to the Principal Secretary to Government, Home Department, Union Territory of Jammu & Kashmir, which representation was delivered in the office of Deputy Commissioner, Kulgam

against a receipt on 30.04.2024. In his representation, the petitioner came to submit that he though an accused and an under-trial by reference to two FIRs mentioned in the grounds of detention as well as in the dossier, he had been admitted to bail by the criminal court of competent jurisdiction and that the antecedents of the petitioner by reference to said two FIRs was exploiting of a stale situation to somehow subject the petitioner to preventive detention custody without any act of commission or omission, that too latest reported or unreported against the petitioner.

17. The preventive detention case of the petitioner was submitted to the Advisory Board under the Jammu & Kashmir Public Safety Act, 1978, which vide its report No. Home/PB-V/222/2024 dated 15.05.2024 came to opine that there is sufficient cause for detention of the petitioner. In addition, the Advisory Board also came to opine that there was no merit in the representation of the petitioner and, as such, warranted rejection.

18. Pursuant to the Advisory Board's opinion upholding sufficiency of cause for preventive detention of the petitioner, the Home Department, Government of UT of

J&K vide Government Order No. Home/PB-V/1092 of 2024 dated 24.05.2024 came to confirm the preventive detention order No. 14/DMK/PSA/2024 dated 16.04.2024 of the District Magistrate, Kulgam and subjected the petitioner to suffer six months of preventive detention period at first instance from 18.04.2024 to 17.10.2024 to continue to stay in custody in the Central Jail, Srinagar.

19. It is in this backdrop that the institution of the present writ petition on 17th of May, 2024 came to take place.

20. In the writ petition, the petitioner has assailed his preventive detention on the grounds as set out in paragraph No.7.

21. The petitioner assails his preventive detention being co-related with stale incidents related to FIRs No. 44/2019 and 69/2019.

22. The petitioner has assailed his preventive detention saying that the exercise of power at the end of the Superintendent of Police, Kulgam followed by District Magistrate, Kulgam being *malafide* in law.

23. The purported grounds of detention as formulated by the District Magistrate are assailed to be fake, irrelevant and non-existent.

24. The petitioner, in order to lend support to his plea for quashment of preventive detention, refers to judgments of the Hon'ble Supreme Court of India in the cases of Dr. Ram Krishan Bhardwaj v. The State of Delhi & Ors. [1953 SCR 708], Shalini Soni & Ors. v. Union of India & Ors. [(1980) 4 SCC 544], Icchu Devi Choraria v. Union of India & Ors. [(1980) 4 SCC 531], Sophia Ghulam Mohammad Bham v. State of Maharashtra & Ors. [AIR 1999 SC 3051], Thahira Haris v. Government of Karnataka & Ors. [AIR 2009 SC 2184], Prakash Chandra Mehta v. Commissioner & Secretary, Government of Kerala & Ors. [AIR 1986 SC 687], Kamleshwar Ishwar Prasad Patel v. Union of India & Ors. [(1995) 2 SCC 51] and Rattan Singh v. State of Punjab & Ors. [(1981) 4 SCC 481].

25. The petitioner has further thrown a vehement challenge to his preventive detention by terming the exercise of jurisdiction on the part of the respondent No.2-District Magistrate, Kulgam based upon fractured facticity in the sense that the fact of the petitioner being granted bail was shared between the Superintendent of Police, Kulgam and the respondent No.2-District Magistrate, Kulgam in a suppressed manner without actually sharing

the orders of bail granted in favour of the petitioner to let the facts and circumstances leading to the grant of bail in favour of the petitioner to be known to the respondent No.2-District Magistrate, Kulgam.

26. Upon nearing of expiry of first six months detention period, the preventive detention custody of the petitioner was further extended vide Government Order No. Home/PB-V/1962 of 2024 dated 10.10.2024 passed by Home Department, Government of UT of J&K thereby extending the petitioner's custody from 18.10.2024 till 17.04.2025, which period is still in currency.

27. The counter affidavit to this writ petition came to be filed on 4th of September, 2024.

28. In his counter affidavit, the respondent No.2-District Magistrate, Kulgam came forward with submissions to justify the preventive detention of the petitioner on account of the so reckoned objectionable antecedents of the petitioner which rendered him vulnerable to suffer loss of his personal liberty in order to secure the security of the State.

29. In his counter affidavit, the respondent No.2-District Magistrate, Kulgam has nowhere adverted himself with

respect to the fate of the representation of the petitioner made against his preventive detention.

30. A singular fact which vitiates the preventive detention of the petitioner to the point of rendering it illegal is the fact that at the time of filing of counter affidavit on 4th of September, 2024, the respondent No.2-District Magistrate, Kulgam had come to be apprised by letter No. Home/PB-V/222/2024 (7456587) dated 2nd of September, 2024 from the end of the Home Department, Government of Union Territory of Jammu & Kashmir to the effect that representation dated 29th of April, 2024 made by the petitioner against his preventive detention is found without merit. In fact, on an earlier occasion also, the Home Department, Government of Union Territory of Jammu & Kashmir vide letter No. Home/PB-V/222/2024 (7456587) dated 24th of May, 2024 addressed to respondent No.2-District Magistrate, Kulgam apprised him about the rejection of the petitioner's representation against the preventive detention being found without any merit.

31. It is from the perusal of the detention record that the aforesaid aspect related to rejection of the representation of the petitioner came to be revealed.

32. This Court cannot countenance the fact that the respondent No.2-District Magistrate, Kulgam was not aware of the fact of rejection of the representation of the petitioner against his preventive detention when on two occasions a correspondence to the said effect came to be addressed to his office from the Home Department, Government of Union Territory of Jammu & Kashmir.

33. In paragraph No. 7 (4), the petitioner has very categorically registered his objection that representation filed by him has not yielded any positive result as the same has not been considered at the end of the respondents. Obviously, the petitioner was right in saying that his representation was not considered by the respondents when he was not apprised about the fate of his said representation. The fact that the representation of the petitioner had been rejected by the Home Department, Government of Union Territory of Jammu & Kashmir was well known to the respondent No.2-District Magistrate, Kulgam, but for reasons best known to him he failed to pass the rejection orders/ communications from the end of the Home Department to the petitioner leaving him with sense of his constitutional right of representation against

a preventive detention only a matter of lip service for no end effect.

34. In addition, in the dossier as well as in the grounds of detention, except for reference of the petitioner's antecedents in the context of aforesaid two FIRs, there was nothing of factual nature post FIR No. 69/2019 upto the framing of dossier against the petitioner to show as to which alleged current activities of the petitioner were serious enough to warrant his preventive detention.

35. Thus, just on a hallowed perception, the Superintendent of Police, Kulgam and the respondent No.2-District Magistrate, Kulgam ventured to use the Jammu & Kashmir Public Safety Act, 1978 against the petitioner to subject him to preventive detention thereby rendering exercise of jurisdiction at their end to be malice in law.

36. In the facts and circumstances aforesaid, the preventive detention of the petitioner is held to be illegal. Accordingly, the preventive detention order No. 14/DMK/PSA/2024 dated 16th of April, 2024 passed by the respondent No.2-District Magistrate, Kulgam read with Government Order No. Home/PB-V/1092 of 2024 dated

24th of May, 2024 read with subsequent extension order passed by the Home Department, Government of Union Territory of Jammu & Kashmir with respect to the preventive detention of the petitioner are also held to be illegal and the same, as such, are quashed. The petitioner is held entitled to restoration of his personal liberty forthwith. The petitioner is, thus, directed to be released from the confinement of concerned Jail and for the said purpose, the Superintendent, of Police concerned jail to carry out the compliance of the writ of *habeas corpus* hereby issued by this Court and release the petitioner.

37. **Disposed of.**

38. Detention record be returned.

**(RAHUL BHARTI)
JUDGE**

Srinagar
25.03.2025
Muzammil. Q (Secy.)

Whether the Judgment/Order is reportable: Yes / No